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Myth-Fact

Myth: The constitutional option will lead to the elimination of the legislative filibuster.

Fact: The legislative filibuster is an important feature of our bicameral legislature that will be preserved. Restoring simple-majority approval of nominations will not lead to the elimination of the minority's rights or the filibuster of legislation. The constitutional option will apply only to the filibuster of judicial nominations. In fact, when Democrats spearheaded an effort to eliminate ALL filibusters in 1995, 19 Democrat Senators voted for it (including Bingaman, Boxer, Feingold, Harkin, Kennedy, Kerry, Lautenberg, Lieberman, And Sarbanes), but not one Republican.

Give a fair up-or-down vote
May 03, 2005
Saxby Chambliss
The Post-Searchlight (Bainbridge, GA)

For the past several years, Senate Democrats, who are in the minority in the U.S. Senate, have prevented a majority in the Senate from fulfilling its Constitutional responsibility to give judicial nominees a fair, up-or-down vote.

The Constitution clearly states that the Senate must give its "Advice and Consent" in order to confirm a president's judicial nominees. Yet for the past two years, a minority of 41 senators has been abusing Senate rules to hold up the confirmation of judicial nominees where a majority of senators have expressed their support for confirmation.

This has never been done before in the history of the Senate. And it is simply unfair for these nominees not to receive an up-or-down vote. The American people expect us to get the business of the country done—this is especially the case after the Senate has debated thoroughly the nominees' qualifications.

It's only fair; for the Senate to vote "yes" or "no" in regard to a particular nominee. However, to do so we need an up-or-down vote to decide what advice we give the president. Failing to answer the question is shirking our constitutional role under separation-of-powers.

Of the 12 men and women that the president has nominated to the federal appellate bench in the present Congress, seven would be filling a position that has been designated by the Judicial Conference of the United States as a "judicial emergency;" that is, where the caseload in that circuit has become critically burdensome for the number of existing judges to handle.

For these reasons, the time has come to restore a 214-year tradition that allowed judicial nominees to be confirmed by a majority of senators. The Constitution spells out in certain areas where a "supermajority" (that is, more than a simple majority) of senators is required, such as ratification of treaties and impeachment trials. Confirmation of judges is not one of these areas.

Over the years, Senate rules have changed on several occasions as to whether, and in what circumstances, a "filibuster" is allowed. But we have unfortunately come to a critical point in time, where the filibuster is being abused to obstruct judicial nominees, on which we are required to act and required to give a simple "yes" or "no" vote.

Because we've reached such a critical point, Senate Majority Leader Bill Frist recently has proposed a compromise that would guarantee full and comprehensive debate; address some procedural concerns about the Senate Judiciary Committee process; limit reforms solely to judicial nominations; and guarantee to preserve and protect the legislative filibuster.

This reasonable offer is fair and would apply regardless of who is in the majority and who is in the minority. The important thing is that we get back to our tradition, which stood for over 200 years, of fulfilling our constitutional duty to give the president an up-or-down vote on his judicial nominees.

All over the country and all over Georgia, I have heard first-hand from citizens—both Democrats and Republicans—who are concerned about judicial nominees being stalled

on the floor of the Senate. Like many Americans, I believe that our nation's judicial system should be put above partisan politics and under no circumstances should either party obstruct the courts from doing their important work, and, in this particular case, the Senate must give each nominee a fair, up-or-down vote to fulfill its constitutional duty.

U.S. Sen. Saxby Chambliss, R-Moultrie, is Georgia's senior U.S. senator.

"Frist vs. the obstructionists," Editorial, The Washington Times, 5/4/05

For decades now, members of both political parties in the Senate have used procedural tactics to prevent up-or-down votes on high-level judicial nominations made by presidents of the opposition party. Who says? Republican Senate Majority Leader Bill Frist said so.

In his April 28 "Dear Harry" letter to Minority Leader Harry Reid, Mr. Frist acknowledged that "it has become clear to me that both parties have significant complaints about the process by which the Senate exercises its responsibility to advise and consent" on judicial nominees. He candidly noted that Democrats have complained that "some of President Clinton's nominees were blocked in committee." Now, Democrats "rely on that foundation to justify the filibusters" against President Bush's appellate-court nominees, the majority leader said. "The cycle of recriminations and partisanship it exacerbates must stop," Mr. Frist said, adding: "Reform of the confirmation process is badly needed, and it must take account of issues raised by each party."

To that end, Mr. Frist offered a two-stage reform plan for circuit court and Supreme Court nominations. First, no longer could the Judiciary Committee bottle up nominations. Second, he proposed "establishing a procedure by which every Supreme Court and circuit-court nomination can be debated for up to 100 hours" on the Senate floor and then "receive an up-or-down vote."

Mr. Frist rightly argued that these reforms "will serve the Senate well, regardless of which party is in the majority and regardless of which party controls the White House." In effect, for high-level judicial nominations, he has offered what Democrats repeatedly demanded when they objected to Republican tactics under President Clinton.

In light of the disdain with which Democrats greeted Mr. Frist's offer, it is worth recalling what they previously said on the Senate floor:

• On June 9, 2001, one month after President Bush issued his first set of circuit-court nominations and four days after Democrats officially gained majority-party status in the Senate, then-Senate Majority Whip Harry Reid said: "I think we should have up-or-down votes in the committee and on the floor."

• On Sept. 14, 2000, Sen. Tom Harkin said: "Governor [George W.} Bush had the right idea. He said the candidate should get an up-or-down vote within 60 days of their nomination."

• On Oct. 3, 2000, Sen. Patrick Leahy, the ranking member of the Judiciary Committee, cited "one very significant issue" on which he and then-Gov. Bush agreed. "We are paid to vote either yes or no -- not vote maybe. When we hold a nominee up by not allowing them a vote and not taking any action one way or the other, we are not only voting maybe, but we are doing a terrible disservice to the man or woman to whom we do this."

• On Oct. 5, 1999, then-Senate Minority Leader Tom Daschle said: "An up or down vote, that is all we ask for [circuit-court nominees] Berzon and Paez. . . . I find it simply baffling that a senator would vote against even voting on a judicial nomination." On March 8, 2000, the day before the Senate would finally elevate U.S. District Court Judge Richard Paez to the 9th U.S. Circuit Court of Appeals, Sen. Russ Feingold said: "All Judge Paez has ever asked for was this opportunity: an up-or-down vote on his confirmation. Yet for years the Senate has denied him that simple courtesy."

• On Sept. 16, 1999, Sen. Dianne Feinstein said: "A nominee is entitled to a vote. Vote them up; vote them down." The next month, she declared, "Our institutional integrity requires an up-or-down vote."

• On Sept. 28, 1998, Sen. Dick Durbin stated: "I am not suggesting that we would give our consent to all of these nominees. I am basically saying that this process should come to a close. The Senate should vote."

• On Jan. 28, 1998, Sen. Barbara Boxer said: "[W]hether the delays are on the Republican side or the Democratic side, let these names come up, let us have debate, let us vote."

• On Dec. 15, 1997, Sen. Paul Sarbanes said: "If the majority of the Senate opposes a judicial nominee enough to derail a nomination by an up-or-down vote, then at least the process has been served."

If Democratic senators insist on perpetuating "the cycle of recriminations" by rejecting Mr. Frist's fair-minded, long-term proposal to end the politicization of high-level judicial nominations, then they will prove that their earlier arguments for up-or-down votes were nothing more than self-serving demands unrelated to ending this decades-old problem.

“Political power vs. popular will,” by Alan Nathan, The Washington Times, 5/4/05

Often when clashes occur between Republicans and Democrats, it sounds like an argument between two kids in class, each declaring his intent to beat up the other but neither having the temerity to take it outside. Such profiles in courage are now on display throughout Capitol Hill.

Under current Senate rules, minority opinion can stop a judicial nominee in the 100-member body through use of the filibuster, providing that the majority is unable to muster 60 votes. It's a dilatory maneuver normally reserved for opposition to legislation. The Republican leadership, under the auspices of Sen. Bill Frist of Tennessee, is threatening to strip away the filibuster, believing it should be limited only to battles over legislation and not applied to the "advice and consent" role of the Senate as referenced in Article 2, Section 2 of the Constitution. The Democrats are apoplectic about this and are promising to paralyze the Senate should the GOP move forward with what Senate Minority Leader Harry Reid of Nevada characterizes as a violation of "checks and balances."

"Checks and balances" is a term of art referring to the inter-dependency of the executive, legislative and judicial branches of our government. However, referencing this term is not a license for the minority party to have majority sway in the Senate — a chamber that's only one-half of one branch. Democrats want the political force of the Republicans without the numeric force to attain it. To let them have such leverage through the filibuster, a non-constitutionally guaranteed entitlement, is to deny the larger agreeing block of voters their proportional representative voice. You don't get to enjoy the very prize that you lost at the ballot box.

Democrats are celebrating polls showing that 66 percent of Americans are against Republicans removing the filibuster. But polling at this juncture is like telling the jury to provide a verdict only after hearing from the prosecution. Surveys are often behind the curve of what folks eventually feel once they're made aware of different facts. Polls taken three years ago showed a slight majority support for the United Nations. Those same pollsters now illustrate a dramatic drop to the 40s because more light has been shined upon that institution's long-standing ills — ills that have existed for years but were failings to which citizens were impervious when first asked about their perspectives.

For example, thanks to liberal ads, most Americans mistakenly think that jettisoning the filibuster would be a break from the intent of our Founding Fathers. New York Democratic Sen. Charles Schumer says, "we're in the ramp-up to a constitutional crisis." Well a quick scanning of our old daddies' Constitution would reveal in Article 1, Section 5 that, "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member." In short, the party in power enjoys the greatest influence over said determination of rules. It appears that the only ones in a crisis are those on the losing end of an argument. (Perhaps that's why Mr. Reid has been backpedaling a bit on the rhetoric and making overtures to Mr. Frist on two of President Bush's 10 conservative judicial nominees.)

Strangely however, some in the GOP are reticent about backing Mr. Frist because they're worried that the Democrats might make good on their threat to stall the Senate. They have business constituents and lobbyists expecting Congress first to address other legislative matters, because, well, darn it, they've paid good money for laws and they're tired of waiting. Others show compunction because they'd like this tool as an option for when they might again be in the minority. What these lion-hearts are forgetting is that if this use of the filibuster is wrong while it hinders you, it's equally wrong when it helps. There's no moral high ground if you're only at the top because the water is rising.

Ultimately, the greatest source of fear is the voting citizenry. But a paradox in representative government is that political power can legitimately go against popular will, even though earlier popular will is what placed that power in office. That's because the electorate is driven more by long-term sentiment over many issues in the aggregate versus short-term feelings over a few in the polls. Hence, the Republican Party is free to secure a greater reach into the future by fighting now for these lifetime judicial appointments. Just as similarly entitled will be the Democrats when it's their turn to have both the White House and the Senate. Scary, huh?

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